



DEPARTMENT OF PERSONNEL

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MEMO PERD #26/05
July 5, 2005

TO: Interested Parties
FROM: Jeanne Greene, Director
Department of Personnel
SUBJECT: PERSONNEL COMMISSION MEETING MINUTES

Attached are the minutes from the March 25, 2005, Personnel Commission meeting. These minutes have not been approved and are subject to revision at the next meeting of the Personnel Commission on July 15, 2005.

JG:sq

Attachment

**PERSONNEL COMMISSION
MEETING MINUTES OF MARCH 25, 2005**

**MEMO PERD # 26/05
July 5, 2005**

I. Call to Order

Chairman Claudette Enus called the meeting to order at 9:04 a.m., March 25, 2005, at the University of Nevada - Las Vegas, Lied Library, with video conferencing to Western Nevada Community College, Reynolds Building, Carson City. Members present: Chairman Claudette Enus and Commissioners Katherine Fox and David Sánchez. Commissioners David Read and Jack Eastwick attended the meeting from Carson City. Also present in Las Vegas were Jeanne Greene and Shelley Blotter from the Department of Personnel, and Sr. Deputy Attorney General Jim Spencer.

II. *Adoption of Agenda

Chairman Enus asked for adoption of the agenda with one change to move Item VI-C immediately following Item IV on the agenda. Commissioner Fox's motion to adopt the agenda was seconded by Commissioner Sánchez and unanimously carried.

III. *Adoption of Minutes of the Previous Meeting

The minutes of the December 19, 2004, meeting were approved by acclamation.

IV. *Regulation Changes to Nevada Administrative Code, Chapter 284

A. Regulations Proposed For Temporary Adoption

Tracy Walters, Personnel Analyst, Department of Personnel, gave the Commission an explanation of the proposed regulation changes that would become effective immediately after filing with the Secretary of State's Office.

Sec. 1 NEW "Lack of promotional candidate" defined.

This amendment, proposed by the Department of Personnel, adds a new section to the regulations defining the commonly used phrase "lack of promotional candidate."

There being no discussion or opposition, Commissioner Fox's motion to approve Section 1 was seconded by Commissioner Sánchez and unanimously carried.

Sec. 2 NAC 284.063 "Entry level" defined.

This amendment, proposed by the Department of Personnel, allows additional classes to be defined as "entry level."

There being no discussion or opposition, Commissioner Fox's motion to approve Section 2 was seconded by Commissioner Sánchez and unanimously carried.

Sec. 3 NAC 284.069 "*Journey level*" defined.

This amendment, proposed by the Department of Personnel, aligns the definition with current practice.

There being no discussion or opposition, Commissioner Fox's motion to approve Section 3 was seconded by Commissioner Sánchez and unanimously carried.

Chairman Enus announced that Section 4 had been withdrawn from consideration.

Sec. 5 NAC 284.718 *Confidential records*.

This amendment, proposed by the Department of Personnel, clarifies that interview materials are confidential and access is not allowed.

Chairman Enus asked whether there's a mechanism or appeal process for applicant's concerning any questions they might have concerning the interview process.

Jeanne Greene, Director, Department of Personnel, stated there is not a formal appeal process but if an employee feels they've been treated unfairly, they can follow the grievance procedure.

Director Greene responded affirmatively to Commissioner Sánchez's question on whether written examination materials are also considered confidential records.

There being no further discussion or opposition, Commissioner Fox's motion to approve Section 5 was seconded by Commissioner Sánchez and unanimously carried.

VI. *Approval of Occupational Group Study Revised Class Specifications

C. Regulatory & Public Safety Occupational Group

George Togliatti, Director, Department of Public Safety, thanked the Department of Personnel for their efforts in completing the study.

Mary Day, Supervisory Personnel Analyst, Department of Personnel, explained the Department had completed an occupational study of 770 law enforcement positions in

33 classes with 17 different grade levels. This has made it difficult for employees to transfer and promote between divisions in the Department of Public Safety (DPS).

Ms. Day stated that 8 new classes were developed with subject matter experts from various positions within DPS. The consolidation was achieved with minimal fiscal impact and no employees' salary was adversely affected. There were 42 positions that received a one-grade downgrade, but those positions will receive a + 5% salary adjustment (approximately equivalent to one grade) for conducting complex investigations in the State Fire Marshal's Office, Investigations Division, Office of Professional Responsibility, or Special Incident Response Team as indicated in the DPS Officer series specification.

Mary Day presented the Commission with an overview of the class concepts for each new class and replied to Commissioner Sánchez that the study took about a year to complete.

Commissioner Eastwick asked whether the DPS Sergeant knowledge, skills and abilities covered the duties of a pilot. Ms. Day directed the Commission to the DPS Sergeant benchmark descriptions where those duties are described.

Commissioner Fox asked how employees would compete for position vacancies with the broadening of the DPS classes. Eve Tlachac, Personnel Analyst, Department of Public Safety, explained that employees could let management know of their interest in a vacancy or a departmental recruitment would be conducted so that anyone eligible could apply.

Mr. Togliatti stated the consolidation of the law enforcement classes was just the beginning of changes for the DPS Model. He explained that their focus to implement the change would be on training and internal procedures to find the best candidates for vacancies.

Commissioner Sánchez asked Director Togliatti what impact it would have on the public with the abolishment of the Trooper title. Director Togliatti stated they would still use the title to describe highway patrol positions, and DPS intends to maintain the individuality of its various divisions.

Commissioner Sánchez asked Director Togliatti whether other states had done a similar consolidation. Director Togliatti replied they had looked at Arizona and Texas for the mechanics of the consolidation.

Director Togliatti described how the DPS model would provide more flexibility and transferability between divisions. The reorganization is needed to bring the department together and also compete with other local law enforcement agencies.

Commissioner Sánchez asked whether DPS had received any feedback from employees. Director Togliatti said there were a lot of questions and most were the same ones the Commission had asked. Director Togliatti is working to standardize uniforms, badges, and vehicles to better identify all divisions as being with the Department of Public Safety.

Colonel David Hosmer explained how replacement badges were purchased for each division, with rank and division identified on them.

Chairman Enus asked Director Togliatti whether he had participated in any structured communications to employees regarding the change to which he replied affirmatively.

There being no further discussion, Chairman Enus called for a motion.

Mary Day stated the Hazardous Materials Inspector series also needed to be considered in the motion. Ms. Day explained that some positions handling hazardous materials allocated to the Deputy Fire Marshal I class did not require Peace Officer Standards & Training (POST) certification. Therefore, a new series was created for Hazardous Materials Inspector to better describe the functions they perform. The training level will be established at grade 31 and the journey level at grade 33. This aligns the series with Commercial Vehicle Inspectors as both require extensive technical knowledge that is typically acquired in vocational-type education programs.

Ms. Day read into the record classes recommended to be abolished as indicated in the meeting agenda.

Shelley Blotter, Chief of Technical Services, Department of Personnel, stated the DPS study would not go into effect until July 1, 2005.

There being no further discussion, Commissioner Sánchez's motion to approve the Regulatory and Public Safety study effective July 1, 2005, as presented was seconded by Commissioner Fox and unanimously carried.

V. *Approval of Proposed Class Specifications

A. Chief, Environmental Programs

Mary Day, Supervisory Personnel Analyst, Department of Personnel stated positions in this class no longer serve as bureau chiefs and the title was revised to reflect the change.

There being no discussion, Commissioner Fox's motion to approve the title change to Chief, Environmental Programs was seconded by Commissioner Sánchez and unanimously carried.

B. Quality Control Specialist series

Mary Day stated the Welfare Division requested this class be updated to include a supervisory level to oversee two positions in Las Vegas. The full-range of supervisory duties include training, assignment and review of work, performance evaluation, disciplinary action, and general working oversight. Quality Control Specialist II was recommended to be allocated at grade 36 to align two grades above its subordinate positions. It also aligns the class two grades below Social Services Chief I who directs the program.

Commissioner Eastwick asked about fiscal impact of the study. Ms. Day responded that one current position would be allocated to the II level and the agency was requesting additional positions in the next budget cycle. She explained that the Social Services Chief I currently has 17 direct reports and this new class would reduce that number.

There being no further discussion, Commissioner Fox's motion to approve the revision of the Quality Control Specialist series was seconded by Commissioner Sánchez and unanimously carried.

VI. *Approval of Occupational Group Study Revised Class Specifications

Mary Day, Supervisory Personnel Analyst, Department of Personnel, explained that the revisions to the following class specifications will become effective upon the Commission's approval. Ms. Day introduced the analysts who conducted the studies and would be presenting them.

A. Engineering & Allied occupational group

1. Supervisor, Associate Engineer series

Vivian Spiker, Personnel Analyst, Department of Personnel, explained the study was conducted with subject matter experts from the Department of Transportation (NDOT). Each level, previously on separate specifications, were combined into a series with distinguishing characteristics between the levels. Division specific options were eliminated and benchmark descriptions added. Ms. Spiker stated that NDOT requested the minimum qualifications remain unchanged as they work well for the agency.

Commissioner Fox's motion to approve the Engineering & Allied occupational group study as presented was seconded by Commissioner Sánchez.

Chairman Enus asked for clarification on the minimum qualifications. Ms. Spiker explained the minimum qualifications were the only sections remaining unchanged and that duty statements and concepts had been revised.

Commissioner Fox's motion unanimously carried.

B. Fiscal Management & Staff Services occupational group

1. Revenue Officer series
2. Insurance & Loss Prevention Specialist
3. Transportation Technician series
4. Maintenance Management Coordinator series

Tewolde Habtemicael, Personnel Analyst, Department of Personnel, stated that with input from subject matter experts, the duty statements and knowledge, skills and abilities had been refined to accurately reflect current job responsibilities for the classes listed above.

5. Computer Information Systems Trainee

Mary Day stated this is an entry-level professional class in which incumbents receive training in preparation for advancement. The duty statements are written generically, and the minimum qualifications were streamlined to reflect current requirements.

Ms. Day read into the record classes recommended to be abolished as indicated in the meeting agenda.

Commissioner Sánchez asked why the Industrial Organizational Psychologist was being abolished. Director Greene explained it was created for a particular incumbent at the Department of Personnel and those duties had been absorbed by other positions.

There being no further discussion or opposition, Commissioner Fox's motion to approve the Fiscal Management & Staff Services occupational group study as presented was seconded by Commissioner Sánchez and unanimously carried.

VII. *Individual Classification Appeals

A. Bruce MacDonald, Administrative Assistant III
Division of Health Sciences, Community College of Southern Nevada

Bruce MacDonald referred to Director Greene's letter of September 18, 1999, regarding the results of the 2001 Clerical occupational group study and found

that the majority of his current duties existed at that time. Mr. MacDonald said he was informed by Human Resources (CCSN) that the classification of Administrative Assistant III was correct. He responded to Human Resources at that time expressing his disagreement. Mr. MacDonald stated he was not informed of an appeal process, otherwise he would have pursued it in 2000.

Mr. MacDonald referred to Director Greene's letter regarding comparisons the Department of Personnel made with two Administrative Assistant IV (AAIV) positions at UNLV. One position was heavily involved with accounting duties with signature authority. He read the class concept and said it doesn't state that signature authority is a requirement of the AAIV. The AAIV class concept also says that positions may or may not supervise others.

Mr. MacDonald stated that he compared his work performance standards (WPS) to those of an AAIV at UNLV's College of Business. The five principal assignments listed on the AAIV work performance standards were also on his WPS, in addition to responsibilities carried forward from the 2001 Clerical occupational group study.

Mr. MacDonald stated that his points were that the Department of Personnel did not dispute his claim that his WPS was the same. The Department of Personnel claims that his duties do not include supervision or signature authority. He does not directly supervise the 10 Administrative Assistant II's within the Division of Health Sciences, but he provides direction to them on a daily basis and also helps to resolve conflicts and seek solutions.

Signature authority at the Community College of Southern Nevada is extremely restrictive, Mr. MacDonald said. Department Chairs have signature authority up to \$500, and only Deans have authority over that amount.

Mr. MacDonald reviewed his duties as follows:

- \$ Acts as liaison for the dean and the associate dean regarding division activities, operations and programs;
- \$ Responsible for coordinating meetings with the dean, president, vice president as well as outside agencies;
- \$ Coordinates all meetings with the dean and the four departments within the division;
- \$ Responsible for maintaining screens for controlled substances and receiving the confidential results;
- \$ Handles sensitive, confidential records;
- \$ Provides selection criteria and information to students on 40 different health programs;
- \$ Coordinates all clinical affiliation agreements between the college and outside agencies where he works closely with the director of purchasing,

the system attorney, and the agency to get an agreement completed.
Currently responsible for 300 agreements;

- \$ Point of contact for National Institute of First Assistance for those agencies in preparation of working agreements in which he works with the business services and legal departments.

Mr. MacDonald summarized his statements saying the Department of Personnel selectively used the class concepts in disregard of his work performance standards and those of the AAIV at UNLV.

Chairman Enus asked if the members had any questions.

Commissioner Sánchez disclosed that he is currently an adjutant instructor at the Community College of Southern Nevada at the West Charleston Campus. He had checked with Sr. Deputy Attorney General, Jim Spencer, on whether there would be a conflict on hearing the CCSN appeals. He's not actually an employee of the college.

Jim Spencer confirmed Commissioner Sánchez's disclosure would not conflict with the Commission's ruling.

Commissioner Sánchez asked Mr. MacDonald how long he's been employed at the college. Mr. MacDonald replied 10 years.

Commissioner Sánchez asked whether Mr. MacDonald knew about the appeal process. Mr. MacDonald replied no.

There being no additional questions, Chairman Enus asked the Department for their presentation.

Yvette Trujillo, Personnel Analyst, Department of Personnel, stated she conducted the classification study on Mr. MacDonald's position. Ms. Trujillo introduced Adrian Foster, Supervisory Personnel Analyst, Department of Personnel, and Diana Cox, Human Resource Manager, Community College of Southern Nevada (CCSN).

Adrian Foster gave an overview on the study of positions at CCSN. In June 2004, the Department of Personnel received 50 NPD-19's. Of the 50, 11 were non-clerical. They conducted studies on the 11 non-clerical positions first and then reviewed the clerical NPD-19's similar to the occupational study process.

In the preliminary discussions with CCSN, they found that some of their employees had contacted other institutions to request work performance standards and other documents to compare their positions to. These employees felt that their jobs had been misclassified.

Mr. Foster explained they developed a questionnaire for the clerical incumbents to complete in order to give the Department of Personnel information on classification factors. In addition, the questionnaire was given to Administrative Assistant I and Administrative Assistant IV positions at CCSN.

Mr. Foster stated employees were interviewed between June and August 2004, and that 2 clerical incumbents withdrew their NPD-19's, and 5 were reclassified. Most of the NPD-19 requests were based on an increase in student population and faculty.

Mr. Foster explained that CCSN is structured a bit differently than some of the other colleges. For example, the way positions are classified is based primarily on reporting structure. If you reported to a dean, the position was an Administrative Assistant III. If you reported to an associate vice president, the position was an Administrative Assistant IV. Administrative Assistant II's at CCSN report to a department head. In contrast, AAIIV's may be assigned to a department head at UNLV because of the size of grant funding and number of students enrolled in that department.

Mr. Foster stated they met with CCSN staff and developed a model of duties. Two distinct characteristics of the positions were:

- \$ Level of authority, personal contacts, and program support;
- \$ Complexity of duties, i.e., financial management, complaint resolution, and managing schedules.

Commissioner Sánchez asked Mr. Foster whether a discriminate or factor analysis was conducted. Mr. Foster replied affirmatively and indicated they used the SPSS computer program to analyze duties and factors.

Commissioner Fox asked why the 39 NPD-19's were submitted. Mr. Foster stated it was because employees at CCSN had compared their positions to ones at other colleges.

Ms. Trujillo addressed the points that Mr. MacDonald made in his presentation. She stated that to the Department of Personnel's knowledge, all incumbents were sent an allocation memo with an explanation of how to initiate appeal rights.

Ms. Trujillo explained that Mr. MacDonald's position was upgraded from an Management Assistant II, grade 25, to Management Assistant III, grade 27, in 1999, and then to Administrative Assistant III, grade 27, after the 2001 Clerical occupational group study.

Mr. MacDonald's 2004 NPD-19 indicated 5 new duties which represented 13% of his overall duties. Two of the new duties are representative of the AAIV level and equaled 10% of the overall duties. The rest of the total duties (87%) were considered to be existing duties that were included on the 1999 NPD-19 and PDQ. The 2004 NPD-19 was compared to other positions within CCSN and UNLV.

Ms. Trujillo stated that 37% of the overall job duties were below the AAIII level; 53% of the duties were at the AAIII level, and 10% were at the AAIV level.

Ms. Trujillo explained how Mr. MacDonald's position compared to other AAIII's at CCSN and UNLV. She also evaluated his position against the AAIV at UNLV which Mr. MacDonald had used, along with 6 other AAIV positions at UNLV and found the structure of the colleges varied.

Ms. Trujillo addressed supervision and signature authority as factors that increase the complexity of any position and should be considered at the time of classifying a position.

Ms. Trujillo stated that due to the absence of significant change, the organizational structure of CCSN, and the preponderance of duties at the AAIII level, it was determined that Mr. MacDonald's position is appropriately allocated to AAIII, grade 27, and it does not warrant reclassification to AAIV at this time.

Commissioner Sánchez asked for clarification of significant change regarding the 10% of duties found to be at the AAIV level. Ms. Trujillo replied the AAIV level duties did not constitute the preponderance of duties.

Chairman Enus asked why Mr. MacDonald didn't compare his position with AAIV's at CCSN. Mr. MacDonald replied their duties have completely different work performance standards than the one at UNLV.

Mr. MacDonald stated he wanted to see the memo that supposedly was sent by the Department of Personnel regarding his right to appeal. Ms. Trujillo said it was in Exhibit 7 of the Department of Personnel's packet.

There being no further discussion, Commissioner Sánchez's motion to deny Bruce MacDonald's appeal was seconded by Commissioner Fox and unanimously carried.

- B. Josephina Wells, Administrative Assistant III
Division of Business, Industry & Public Services, Community College of Southern Nevada

Josephina Wells explained she worked for the dean of business at CCSN, and her duties have increased in complexity. The complexity identified in her work performance standards demonstrates that she provides secretarial, clerical and administrative support to the administrator of a complex division who is responsible for multiple programs and functions.

- \$ Develop and implement production goals required to complete ongoing assignments for each program;
- \$ Handle confidential information;
- \$ Assist visitors;
- \$ Investigate complaints and public inquiries;
- \$ Provide information to students and others;
- \$ Coordinate communication between other administrators;
- \$ Public relations;
- \$ Review and evaluate information concerning the eligibility of students;
- \$ Interpret program policies, regulations and requirements;
- \$ Coordinate complex assignments;
- \$ Assist in final preparation of class schedules (Ms. Wells stated she's been in this position for 13 years and the difference between then and today, is that she no longer simply enters data. Now she analyzes and makes suggestions to the final class schedule);
- \$ Compile information and statistical data required in the development of budget (Ms. Wells studies the budget and determines whether or not enough money is budgeted before it goes to the dean);
- \$ Create and revise work performance standards; and complete reclassification requests;
- \$ Train staff within division;
- \$ Coordinate office coverage;
- \$ Monitor and review work assignments of lower level Administrative Assistant and make recommendations to increase productivity and meet deadlines;
- \$ Assess requirements of students wishing to take more than 19 credits, and approve request for Dean's signature.

Ms. Wells had compared her position to the AAIV at UNLV's School of Business and the AAIV class concepts. Ms. Wells feels her level of independence and scope of authority are consistent with those of the AAIV.

Dr. Christopher Kelly, Division Dean, Business, explained their service area consists of 40,000 sq. miles with 10,000 students in their division programs, which is largest among the other Nevada community colleges. Dr. Kelly stated

that CCSN has a lack of support funding, so their assistants have to do much more than other assistants throughout the system. For consistency and fairness this was an appeal that should be granted. Dr. Kelly doesn't have an assistant dean in his division and therefore, delegates those assignments to Ms. Wells.

John Salas, Personnel Analyst, Department of Personnel, stated he conducted the study on Ms. Wells' position. Ms. Wells' position was reclassified from Management Assistant II, grade 25, to Management Assistant III, grade 27, in 1999, then retitled to an Administrative Assistant III, grade 27, in the 2001 Clerical occupational study.

Ms. Wells' 2004 NPD-19 listed 37 duties and was compared to the 1999 NPD-19 and 2000 PDQ. The results showed that approximately 14% of the duties were new, and of the 5 new duties, only 1 is at the AAIV level representing 2.4% of the overall duties. The remaining 86% of the 2004 NPD-19, are described in the 1999 NPD-19 and PDQ. The Department attributed some of the new duties to natural growth. The 2004 NPD-19 was compared to the class specification as well as the scope and complexity of duties among CCSN AAIV's and AAIH's, presented earlier by Mr. Foster to determine whether there was a preponderance of duties and responsibilities at the AAIV level to warrant a reclassification. Forty percent of Ms. Wells' duties are performed below the AAIH level. Forty-six percent of the duties are being performed at the AAIH level, and 14% of the duties are at a higher level.

Mr. Salas stated the preponderance of Ms. Wells' duties were at the AAIH level. Mr. Salas referred the Commission to testimony heard during Mr. MacDonald's appeal regarding how the Department of Personnel had studied the AAIH and AAIV positions and organizational structure at CCSN. Mr. Salas said the most complex assignments for Ms. Wells are assisting in the accreditation process, course scheduling and numbering, and monitoring the budget. Mr. Salas explained that Ms. Wells' position differed from CCSN AAIV's in terms of job duties, scope, complexity, supervision, and expenditure management.

Mr. Salas stated that because of the reporting structure at CCSN, the absence of significant change, and the preponderance of duties and responsibilities being performed at the AAIH level, the Department of Personnel finds this position is appropriately classified at this time.

Dr. Kelly thought the fairest comparison would be to compare his division with UNLV's Department of Business. At UNLV, there would be three separate deans for business, hotel, and public administration programs. All of those programs are under one dean at CCSN. Dr. Kelly thought it was inconsistent to compare Ms. Wells' appeal with those of a division outside of the academic arena.

Ms. Wells stated she requested work performance standards of AAIIV's from CCSN numerous times and was told there weren't any. She didn't have anything to compare her position to.

Commissioner Sánchez asked for an explanation on the lack of WPS for positions and the sharing of them.

Diana Cox stated Ms. Wells requested the information from someone else in her office. WPS are normally on file for every employee and they are working to request them from agencies when missing. Ms. Wells didn't receive what she requested because the division hadn't submitted them.

Chairman Enus asked Ms. Cox whether her staffer responded to Ms. Wells one way or the other. Ms. Cox stated she was not involved with the request and didn't know.

Ms. Wells stated she addressed her e-mail request to Diane Fruth at CCSN. (Ms. Fruth is responsible for classified staff.) Ms. Wells did receive a response that it wasn't on file.

Dr. Kelly added that Ms. Wells now directly supervises an Administrative Assistant II.

Adrian Foster explained the Department of Personnel did obtain WPS from the individuals Ms. Wells referred to during their interviews. These were documents prepared by their supervisors but not submitted to CCSN's Human Resource Department. These documents are available by contacting the incumbents directly.

Chairman Enus asked Ms. Wells whether she was hindered in her appeal because she didn't receive the information she requested even though she did have access to the incumbents. Ms. Wells felt the information would have aided her appeal.

Commissioner Sánchez stated that a classification study has very specific guidelines and rules to follow. He didn't see that anything was violated in the process and how it was handled.

Chairman Enus explained what was within the purview of the Commission was to determine whether there was 1) change in the preponderance of duties from the last study; 2) change in relationships in terms of scope and complexity of duties.

Mr. Foster stated they looked for an increase in complexity of duties. They saw the importance of the common course numbering and some of the other duties, but there are also AAI's performing some of these duties. There is a greater scope than some of the other divisions where there are multiple deans, but do not take the position to the level of the AAIV.

There being no further discussion, Commissioner Sánchez's motion to deny Josephina Wells' appeal was seconded by Commissioner Fox and carried unanimously.

VIII. Special Reports

Jim Spencer, Sr. Deputy Attorney General, explained that at the last PC meeting, the Commission asked him to investigate the circumstances surrounding Nishon Burton's grievance and the denial of it. Referring to a chronological document he prepared January 13, 2005, it explains what happened with her grievance and why it was denied. It also explains the purpose of SB37 and how it provided certain former EICON employees with benefits as EICON employees for purposes of reemployment which are not provided to any other State employees. The conclusion is that Ms. Burton had no right at all to any of the benefits that were provided to her by the regulations recently adopted by the PC. Those benefits go beyond what was anticipated in SB37; however, the PC did act and did provide certain benefits with longevity payments.

The issue at the last PC meeting was the restoration of sick leave that was lost upon termination of certain employees under SB37 when they went to EICON and what their rights would be upon reemployment to the State. The paper indicates that certain employees would have been entitled to restoration of sick leave had they reemployed with the State within one year of termination from EICON. It also points out that Ms. Burton and the others that came forward did not get reemployed within that one year and were not legally entitled to the restoration of sick leave.

The document also refers to a grievance filed in another department on the restoration of sick leave issue which said basically that because of the Department of Employment, Training and Rehabilitation's (DETR) error in giving Ms. Burton and others their sick leave balances back, contrary to SB37's requirements, they wanted to have the same benefit. Because of the error, the sick leave was later taken away. The EMC, charged with making determinations on employee grievances, denied those claims. This shows that had Ms. Burton submitted her grievance timely (DETR had entered into an agreement to extend the timeframe), it would most likely have been denied.

In summary, Mr. Spencer stated the Commission could adopt a regulation retroactive to allow special treatment for certain people, not just Ms. Burton, that would globally affect anyone else that came out of SB37 that did not get reemployed with the State within one year. However, this would grant a benefit to Ms. Burton and others that was not intended by SB37.

Chairman Enus asked Director Greene about any fiscal impact of adopting a regulation.

Director Greene replied that a new regulation would affect 96 employees with an indirect cost of \$475,812 for the restoration of sick leave.

Chairman Enus stated this has been a difficult issue for the Commission. Chairman Enus recognized Ms. Burton in the audience and although the PC would take no action at this meeting, Chairman Enus wanted to allow her to address them.

Nishon Burton explained she gave this information to someone in the Welfare Division in 9/03 (they were restored benefits in 3/03), and this person filed a grievance. Ms. Burton stated 9 individuals were restored benefits, 4 had been taken away in 3/04. Ms. Burton returned to State service in 3/01, someone else returned in 2/01, and they were not impacted.

Chairman Enus asked for clarification. Was it Ms. Burton's understanding that those other employees, who returned outside of the one year window, did receive those benefits?

Ms. Burton replied yes, and stated those employees still possess and are eligible to use those benefits.

Chairman Enus stated it was her understanding there were no individuals in that situation, who had total and complete restoration. She asked Director Greene or Mr. Spencer whether they had any information on this claim that there were individuals who had complete and total benefits restored, yet they returned outside of the one-year window.

Director Greene explained that DETR is the only agency that has experienced this situation. The records of all the other agencies were audited and found they had applied SB37 consistently. There is a group of 6 individuals in DETR that fall within this category. There were some that did come back after that one year period, but they were given layoff notices. If they were given a layoff notice, they had additional rights as per SB37. Whereas, Ms. Burton reemployed on a voluntary basis after the one year period. It was the language of SB37 that granted rights to some individuals and not to others.

Ms. Burton stated there were two individuals (voc rehab counselors) laid off in February or March 2001, and she understands how SB37 was applied for them. But, there was an individual who works for Voc Rehab who voluntarily returned to the State in February 2001 was restored sick leave. On March 29, 2004, there were only 4 of them notified their benefits would be taken away and not the rest. Ms. Burton said DETR had not addressed these issues with those employees, and nothing has impacted them.

Ruth Edsall, Personnel Officer, DETR, explained they have waited for a final resolution to take the final definitive action with regard to all employees in DETR who were reemployed from EICON. Ms. Edsall said Ms. Burton is correct that these 4 individuals had some of their benefits or status changed last year when they were directed to make some corrections by State Personnel. Because there was a grievance and ongoing dialog about this issue, they waited to take final action and are in the process now of putting the paperwork together and signed for all of their employees to correct the mistakes they've made over the last few years.

Ms. Edsall stated that Ms. Burton maintains there are some employees that DETR hasn't addressed the removal of benefits, particularly sick leave in the way they did with her and the other three individuals. Ms. Edsall said she asked Ms. Burton for names, but didn't receive any. They've audited their records and tried to determine who would be affected and who wouldn't, and they will be processing corrections in accordance with instructions received from State Personnel.

Chairman Enus stated she was extremely disappointed regarding this whole issue. SB37 said what it said. If a decision was made concerning these 4 employees regarding the status of their benefits, there should have been consistency within the agency in terms of how similarly situated employees were treated relative to this statute. The statute clearly outlined the group of employees that were affected by it and felt that at least there were some other employees who continued to maintain those benefits, contrary to the provisions outlined in SB37.

Chairman Enus requested that the department and DETR get together, identify all employees within DETR that were affected by this statute and ensure that the provisions of the statute are compiled with to the letter. She requested a status report by the next Commission meeting.

Commissioner Sánchez referred Chairman Enus to the document prepared by Mr. Spencer reading, "overpayment of compensation or benefits by a public employer to a public employee must be recovered by the employer."

Ms. Edsall stated she appreciated Chairman Enus and Commissioner Sánchez's remarks and shared some of their frustration and apologized in part for having caused some of it for them. Ms. Edsall explained that a thorough audit of every employee affected would be made and they will recover any overpayments made

Chairman Enus said she would greatly appreciate Ms. Edsall communicating with all affected employees regarding the status of this issue, in terms of how the irregularities occurred, the final disposition and resolution, and a confirmation that all employees have been treated consistent with the provisions of SB37.

Ms. Burton stated she had read through regulations NAC 284.598, 284.540, 284.282, and 284.182 and found that every rule states a former employee must be rehired within one year. She didn't understand why annual leave wasn't considered a liability as sick leave is.

Mr. Spencer replied that annual leave is a property interest. Employees have a right to payment either by taking leave or upon termination. Sick leave is a benefit. You can use it when qualified and authorized to use it for an illness while you're an employee.

Ms. Burton asked why annual leave and longevity pay weren't considered a benefit.

Mr. Spencer stated the difference is that one is a property interest. When you earn an annual leave hour, it's cash in your pocket. The others are different, you have to meet certain criteria, such as longevity – you have to be in service for 8 years.

Chairman Enus stated the issue is what the Legislature did in SB37 and how they set out the conditions under which certain amounts of leave would be reinstated. She recommended that Ms. Burton follow-up with the Legislature to reconsider or put in another bill changing what that they passed in the 1999 session concerning SB37. Earlier she had asked that DETR and the Department of Personnel go back and review all employees who've been affected and make the appropriate decisions in accordance with SB37. It isn't within the Commission's purview to do more than has been done.

Ms. Burton asked whether the Commission would direct the Department of Personnel to draft a regulation allowing the restoration of benefits as addressed.

Chairman Enus explained it was beyond the Commission's authority to talk about indebting the State or making a decision that would make the State have to come forward with an additional half million dollars.

LaTonya Wells, one of the 4 who had benefits taken away, thanked the Commission for the opportunity to appear before them. Ms. Wells wanted to put on the record that there were others who did resign their positions from EICON without a layoff notice from the private company.

Chairman Enus thanked Ms. Burton and Ms. Wells for their time and efforts and closed the discussion on this issue.

IX. Comments by the General Public

There were none.

X. Select Date for Next Meeting

The next meeting was tentatively scheduled set for Friday, July 15, 2005, in Carson City.

XI. Adjournment

Commissioner Fox's motion to adjourn the meeting was seconded by Commissioner Sánchez and unanimously carried at 12:14 p.m.